

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**HOP HING PRODUCES INC.,**

**Plaintiff,**

**-against-**

**SUNRISE FOOD MARKET, INC., et al.,**

**Defendants.**  
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**REPORT AND  
RECOMMENDATION**

**11-CV-6334 (DLI)**

**ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:**

Plaintiff Hop Hing Produces Inc. (“plaintiff”) filed this action under the Perishable Agricultural Commodities Act on December 28, 2012. Plaintiff named three defendants, two of whom were served on January 6, 2012. See Summons Returned Executed (Jan. 17, 2012), Electronic Case Filing Docket Entries (“DE”) #3-4. The third defendant -- Xiang Yang Xia -- has never been served.

On April 26, 2012, given the lack of activity in this case, this Court issued an Order to Show Cause why the case should not be dismissed for lack of prosecution. See Order To Show Cause (Apr. 26, 2012), DE #5. In a response filed the following day, plaintiff stated that it was “hoping to effectuate service upon all defendants before obtaining any judgment,” but that, in view of the Court’s Order To Show Cause, “we shall be submitting our motion for default within ten (10) days against the [two served but] non-appearing defendants . . . .” Response to Order To Show Cause (Apr. 27, 2012), DE #7.

Contrary to plaintiff’s assurance, and in violation of a court order directing that plaintiff move for default against the two served defendants within ten days -- i.e., by May 7, 2012, see Endorsed Order (Apr. 27, 2012), DE #8 -- plaintiff has taken no further action in this case.

Moreover, despite the expiration of more than 120 days since the filing of this lawsuit on December 28, 2012, plaintiff has not effectuated service on defendant Xiang Yang Xia, nor has plaintiff shown good cause for its failure to do so. See Fed. R. Civ. P. 4(m).

In view of plaintiff's apparent lack of interest in diligently pursuing its claims, as well as its violation of a court order aimed at moving the case along, this Court recommends that the complaint be dismissed with prejudice for lack of prosecution. See Fed. R. Civ. P. 41(b).

Any objection to the recommendation contained in this Report and Recommendation must be filed with the Honorable Dora L. Irizarry on or before **June 1, 2012**. Failure to file objections in a timely manner may waive a right to appeal the District Court order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a)(1), 72(b)(2); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to enter this Report and Recommendation into the ECF system.

**SO ORDERED.**

**Dated: Brooklyn, New York  
May 15, 2012**

**ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE**